(4)

(1)

P.R. No. 139/07
Presented by Shri Prakash Sharma
dated 10/11/07

~~CF 2007~~ Division Bench
CF 2007

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

TAX CASE ~~84~~

~~TAX MATTER(Central Excise Appeal)~~ NO. 02 /2007

APPELLANT M/s Prachi Resins Pvt. Ltd.

Through Pramod Lunawat Director, Village- Bharampura, VIP, Road Raipur [C.G.]

P.R. No. B3417
Presented by Sunil Jain
dated 9/11/07

VERSUS

RESPONDENT The Commissioner of Central Excise, Raipur

Central Revenue Building Civillines Raipur [C.G.]

RIC
Explanation
10/11/07
clerk
THAKUR VIJAY SINGH
Asst. Solicitor General of India
CHHATTISGARH HIGH COURT
High Court Campus, Bilaspur (C.G.)

APPEAL U/S 35 G OF THE CENTRAL EXCISE ACT, 1944

~~15/11/2006~~ passed

XI-HC-22

(3)
(109)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Tax Case 2 **सन्** 2007

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.01.2007

On being mentioned, the matter is taken-up for hearing.

Shri Prateek Sharma, counsel for the appellant.

Shri Bhisma Kinger, Standing counsel for the respondent.

Heard.

Commissioner of Central Excise, respondent herein passed an elaborate order on 31.03.2006, imposing excise duty amounting to Rs.50,79,088/- and penalty of the same amount against the petitioner. Feeling aggrieved, petitioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (henceforth "the Tribunal") and also moved an application for grant of stay.

The Tribunal passed order dated 15.11.2006; the operative part of the same order reads as below :-

> *" In view of this, we do not find any substance in this contention of the appellant for total waiver of pre-deposit. Having regard to the facts and circumstances of the case, we direct that there shall be interim stay of the impugned order on the appellant company depositing a sum of Rs.20 lakhs (Rupees Twenty Lakhs only) within 8 weeks from today, failing which the appeals of the defaulting appellants shall stand dismissed. On depositing the amount there shall be waiver of rest of the amount of penalty payable by them. "*

Learned counsel for the appellant relied on judgments rendered in the matters of **Dhakeswari Cotton Mills Limited Vs Commissioner of Income Tax, West Bengal**, reported in (S) AIR 1955 SC 65 & **Swadeshi**

खेये)

XI-HC-22

(110)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Tax Case 21 **सन्** 2007

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Cotton Mills Vs Union of India reported in (1981) 1 SCC 664 contended that fair opportunity has not been allowed to the appellant by the Tribunal. We have gone through both the cases, and are of the opinion that on facts and in the circumstances of the instant case, the principle enunciated in both the cases are not applicable to the present one.

Questions formulated by the appellant are open for consideration before the Tribunal. The Tribunal has been empowered under Section 35 (F) of the Central Excise Act 1944 (henceforth "the Act") to pass appropriate order after due consideration of hardship of the appellant, and the Tribunal after due consideration of the hardship, has passed the impugned order.

In the light of above facts and circumstances of the cases, we do not find any illegality or infirmity in the said order. It does not involve any question of law what to say of substantial question. The appeal filed by the appellant against the interim order passed by the Tribunal is devoid of substance; therefore, it is dismissed *in-limine*.

IA No.111 & 112 of 2007 and M.(C.)P.No.73/2007 stand disposed of.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

padma

(पीछे देखिये)

8/9/11/07